ANGEL'S BHOOM ENTERPRISES, INC.

Opposer,

-versus-

ROMEO DAGANON,

Respondent-Applicant.

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IPC NO. 14-2008-00169
Case Filed on: 31 July 2008
Opposition to:
Appln. Serial No. 4-2006-005376
Date Filed: 22 May 2006
Trademark: "EP GOLDEN POWER"

Decision No. 2011- 19

DECISION

ANGEL'S BHOOM ENTERPRISED, INC. ("Opposer"), a Philippine corporation with business and office address at Room 3C, 3rd Floor, JEMMS Building, Delpan corner Zaragoza Street, Tondo, Manila, filed on 31 July 2008 an opposition to Trademark Application Serial No. 4-2006-005376. The application, filed by ROMEO DAGANON ("Respondent"), of No. 1010 Building, A. Mabini Street, Ermita Manila, covers the mark "EP GOLDEN POWER" for use on "light bulb" under Class 11.

The Opposer alleges, among other things, that the approval of the Respondent-Applicant's application is contrary to Section 123.1 (d) 138 of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"). The Opposer claims that as registered owner of the trademark "DP GOLDEN POWER", the approval of the application in question will violate its right to the exclusive use of its registered trademark which will cause it great and irreparable damage and injury. According to the opposer, GP GOLDEN POWER is duly registered in its favor under Reg. No. 4-2003-006047 effective as of 01 July 2005 for use on energy saving bulb falling under Class 11, and which continues to be in full force and effect. GP GOLDEN POWER, the Opposer says is also registered (Reg. No. 4-2006-009348) effective as of July 2007 for use on various goods, including fluorescent lamp, bulb, incandescent lamp, falling under Class 11.

The Opposer's evidence consists of the following:

1. Exh. " A" – Certified copy of Cert. of Reg. No. 4-2003-006047 issued on 01 July 2005 for the mark GP GOLDEN POWER;
2. Exh. "B" – Certificate copy of Cert. of Reg. No. 4-2006-009348 issued on 16 July 2007 for the mark GP GOLDEN POWER;
3. Exh. "C" to "C-7" – Representative sales invoices of the oppose bearing the mark GP GOLDEN POWER;
4. Exh. "D"- the opposer's label bearing its mark GP GOLDEN POWER
5. Exh. "E"- Print-out of the Respondent-Applicant's mark EP GOLDEN POWER as published in the e-Gazette released last 09 May 2008;
6. Exh. "F"- the Respondent-Applicant's label bearing his mark EP GOLDEN POWER; AND
7. Exh. "G"-Duly notarized affidavit of Imelda H. Genoroso.

This Bureau issued on 21 August 2008 a Notice to Answer. The notice indicated the address of the Respondent-Applicant as appearing in its trademark application and the documents comprising the filewrapper thereof. In the Order No. 2009-302, this Bureau stated:

> "Records show that this Bureau issued a Notice to Answer dated 21 August 2008 to respondent-applicant and was personally served on 03 September 2008. However, the same was not served because respondent-applicant has vacated the premises (as per affidavit of BLA process Server Samuel G. GO).

"Considering that no change of address was filed by respondent-applicant to inform this Bureau of its new business address, the personal service of the Notice made by this Bureau is deemed complete and duly served.

"WHEREFORE, this case is hereby submitted for decision. The Opposition affidavits of witnesses and evidences presented by the opposer shall be the basis in deciding this case."

Should the opposition to Trademark Application Serial No. 4-2006-005376 be sustained?

The essence of trademark registration is to give protection to the owners of trademarks. The function of a trademark is to point out distinctly the origin or ownership of the goods to which it is affixed; to secure to him, who has been instrumental in bringing into the market a superior article of merchandise, the fruit of his industry and skill; to assure that they are procuring the genuine article; to prevent fraud and imposition; and to protect the manufacturer against substitution and sale of an inferior and different article or his product.

In this regard, an opposition case once filed becomes basically a review of the trademark application in question, succinctly, to determine whether the requirements under the law are met. Accordingly, this Bureau may and should also take cognizance by way of judicial notice of the entries or contents of the Trademark Registry and other official records of the Intellectual Property Office of the Philippines. Thus, Sec. 123.1 (d) of the IP Code states that a mark shall not be registered if it is identical with a registered mark belonging to a different proprietor or if a mark with an earlier filing or a priority date in respect to the same goods or services or closely related goods or if it nearly resembles such a mark as to likely to deceive or cause confusion.

The Opposer's case is anchored on the fact that at the time the Respondent-Applicant filed his trademark application on 22 May 2006, there is already an existing trademark registration for the mark "GP GOLDEN POWER AND LOGO" (Reg. No. 4-2003-006047). The registration was issued was issued on 01 July 2005 in favor of one John D. Baterna and covers the goods "energy saving bulb" under Class 11. The Opposer claims that it is assignee of the trademark registration. Moreover, the Opposer had obtained Trademark Registration No. 4-2006-00348 with date of registration of 16 July 2007 for the mark "GP GOLDEN POWER" for use on, among other goods, "fluorescent lamp, bulb, incandescent lamp, heater, water heater, steamer, rice cooker, hair dryer, ventilating fan, air conditioner" under Class 11.

The question is: Is the Respondent-Applicant's mark identical or confusingly similar to the mark under Reg. No. 4-2003-006047 and Reg. No. 4-2006-009348, as shown below?

GP GOLDEN POWER	EP GOLDEN POWER
Reg. No. 4-2003-006047 and 4-2006-009348	Respondent-Applicant's mark

This Bureau finds that the mark applied for registration by the Respondent-Applicant is a colorable imitation of the covered by Reg. Nos. 4-2003-00647 and 4-2006-009348. Except for the letter "E" initials in the Respondent-Applicant's mark and the letter "G" in the "GP" initials in the marks under Reg. Nos. 4-2003-006047 and 4-2006-009348, the marks are identical in their designs or presentations, with two letters in the uppercase on top of the words "GOLDEN POWER", also in the uppercase. The Respondent-Applicant would not have used an identical design and presentation, especially the words "GOLDEN POWER", if he has no intention of imitating the marks under Reg. Nos. 4-2003-006047 and 4-2006-009348. Even the letters "E" and "G", are phonetically similar when in combination with the letter "P". "E" is pronounced as a "long E" while "G" is pronounced partly with a "long E". Moreover, the intent to simulate or emulate the mark covered by Reg. Nos. 4-2003-006047 and 4-2006-009348 becomes more

apparent by the fact the Respondent-Applicant's mark is used for goods which are similar and closely related to the goods on which the marks under.

Aptly, colorable imitation does not mean such similitude as amounts to identify, nor does it require that all details be literally copied. Colorable imitation refers to such similarity in form, content, words, sound, meaning, special arrangement or general appearance of the trademark or trade name with that of the other mark or trade name in their over-all presentation or in their essential, substantive and distinctive parts as would likely to mislead or confuse persons in the ordinary course of purchasing the genuine article. Actual confusion is not required, only likelihood of confusion on the part of the buying public is necessary so as to render two marks confusingly similar so as to deny the registration of the junior mark.

Accordingly, this Bureau finds that the Respondent-Applicant's trademark application is proscribed by Sec. 123.1 (d) of the IP Code.

The parties and the public are reminded that the law on trademarks and tradenames is based on the principle of business integrity and common justice. This law, both in letter and spirit is laid upon the premise that while it encourages fair trade in every way and aims to foster, and not to hamper competition, no one especially a trader, is justified in damaging or jeopardizing others business by fraud, deceit, trickery or unfair methods of any sort. This necessarily precludes the trading by one dealer upon the good name and reputation built by another. A "boundless" choice of words, phrases and symbols is available to one who wishes a trademark sufficient unto itself to distinguish his products from those of others. When, however, there is no reasonable explanation for the defendant's choice of such a mark though the field for his selection was so broad, the inference is inevitable that it was chosen deliberately to deceive. The ultimate ratio in cases of grave doubt is the rule that as between new comer who by the confusion has nothing to lose and everything to gain and one who by honest dealing has already achieved favor with the public, any doubt should be resolved against the newcomer in as much as the field from which he can select a desirable trademark to indicate the origin of his product is obviously a large one.

WHEREFORE, premises considered, the instant opposition is hereby SUSTAINED. Let the filewrapper of Trademark Application Serial No. 4-2006-005376 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO OREDERED.

Makati City, 28 February 2011